

11-15-93

303(a)

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

MARY ANN MONAGHAN, Inc. and as Exec. :
- VS - : NO. 93-02928
ALLIED-SIGNAL, INC., ET AL. :

COVER SHEET OF MOVING PARTY

Date of Filing Nov. 15, 1993 Moving Party Allied-Signal, Inc., The B.F. Goodrich Company
Ethyl Corp. and Shell Chemical Company

Counsel for Moving Party Richard C. Biedrzycki I.D. No. 30604

Counsel for Other Parties Peter T. Paladino I.D. No. 36596
(If Known)
I.D. No.
(If Known)

Document Filed (Specify) Preliminary objections of defendants Allied-Signal, Inc.,
The B.F. Goodrich Company, Ethyl Corp. and Shell Chemical
Company to plaintiff's amended complaint

Matter Is (Check One) Appealable XX Interlocutory

Moving Party Requires (Specify Reason if Interlocutory):

DISCOVERY

ORAL ARGUMENT

If Interlocutory, Is Memorandum of Law Attached? Yes No X

Check ONE ONLY of the Choices Listed Below:

 Respondent Is Directed to Show Cause Why the Attached Motion or Petition Should
Not be Granted. Rule Returnable the day of , 198 at 9 a.m. Ct.Rm.

X Respondent Is Directed to File a Response Within Twenty (20) Days in
Conformity with Pennsylvania Rules of Civil Procedure.

 Respondent Is Requested to File Respondent's Cover Sheet Only Within
Twenty (20) Days.

NOTE: Cover Sheet is NOT to be Used for Matters Requiring Hearings.
Service of Cover Sheet is Responsibility of Moving Party.

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ATTORNEY FOR: DEFENDANTS
ALLIED-SIGNAL, INC.,
THE B.F. GOODRICH COMPANY,
ETHYL CORP. AND
SHELL CHEMICAL COMPANY

MARY ANN MONAGHAN, Executrix of
the Estate of ROBERT F.
MONAGHAN, Deceased, and MARY ANN
MONAGHAN, in her own right,
Plaintiff

v.

ALLIED-SIGNAL, INC. successor-
in-interest to Allied Corp.,
et al.,
Defendants

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MONTGOMERY
CIVIL ACTION - LAW

TRIAL DIVISION

JURY TRIAL DEMANDED

NO. 93-02928

ORDER

AND NOW, to wit, this day of , 199 ,
upon consideration of the preliminary objections of defendants
Allied-Signal, Inc., The B.F. Goodrich Company, Ethyl Corp. and
Shell Chemical Company, it is hereby ORDERED and DECREED that:

1. Preliminary Objection "A" in the nature of a
motion to strike off the claims of plaintiff Mary Ann Monaghan in
her own right for lack of conformity to law or rule of court
pursuant to Pa.R.Civ.P. No. 1028(a)(2) is GRANTED, whereby all

claims brought by plaintiff Mary Ann Monaghan on her own behalf are **STRICKEN**;

2. Preliminary Objection "B" in the nature of a motion to strike off strict liability claim under the Wrongful Death Act pursuant to Pa.R.Civ.P. 1028(a)(2) is **GRANTED**, whereby all claims for strict liability under the Wrongful Death Act are **STRICKEN**;

3. Preliminary Objection "C" in the nature of a motion to strike claims for damages on behalf of children under the Wrongful Death Act pursuant to Pa.R.Civ.P. No. 1028(a)(2) is **GRANTED**, wherby all claims for damages on behalf of decedent's children are **STRICKEN**;

4. Preliminary Objection "D" in the nature of a demurrer to plaintiff's claims under the Wrongful Death Act pursuant to Pa.R.Civ.P. No. 1028(a)(4) is **GRANTED**, whereby all claims brought by plaintiff under the Wrongful Death Act are **STRICKEN**;

5. Preliminary Objection "E" in the nature of a demurrer to plaintiff's claim for punitive damages pursuant to Pa.R.Civ.P. No. 1028(a)(4) is **GRANTED**, whereby all claims for punitive damages are **STRICKEN**;

6. Preliminary Objection "F" in the nature of a motion for a more specific pleading pursuant to Pa.R.Civ.P. No. 1028(a)(3) is **GRANTED**, whereby plaintiff is directed to file a second amended complaint within twenty (20) days from the date of

this Order setting forth her claims with more specificity as follows:

(a) Plaintiff shall specifically aver the dates on which plaintiff's decedent was exposed to each of the moving defendants' vinyl chloride products;

(b) Plaintiff shall specifically set forth the "applicable state and federal safety regulations and safety codes for use of and exposure to VCM" as described in paragraph 23(h) of the amended complaint; and

(c) [In the event that plaintiff's claims for punitive damages are not stricken in their entirety] Plaintiff shall specifically set forth the specific material facts upon which she bases her claim for punitive damages including, but not limited to, which, if any, of the moving defendants possessed knowledge of the alleged carcinogenicity of VCM, whether any such knowledge included knowledge of a causal association between exposure to VCM and glioblastoma multiforme or other types of brain cancer and averments as to what each defendant did or failed to do in light of such knowledge which

plaintiff avers entitles her to punitive
damages.

BY THE COURT:

J.

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ATTORNEY FOR: DEFENDANTS
ALLIED-SIGNAL, INC.,
THE B.F. GOODRICH COMPANY,
ETHYL CORP. AND
SHELL CHEMICAL COMPANY

MARY ANN MONAGHAN, Executrix of
the Estate of ROBERT F.
MONAGHAN, Deceased, and MARY ANN
MONAGHAN, in her own right,
Plaintiff

v.

ALLIED-SIGNAL, INC. successor-
in-interest to Allied Corp.,
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Defendants

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MONTGOMERY
CIVIL ACTION - LAW

TRIAL DIVISION

JURY TRIAL DEMANDED

NO. 93-02928

**PRELIMINARY OBJECTIONS OF DEFENDANTS
ALLIED-SIGNAL, INC., THE B.F. GOODRICH COMPANY,
ETHYL CORP. AND SHELL CHEMICAL COMPANY
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants Allied-Signal, Inc., The B.F. Goodrich
Company, Ethyl Corp. and Shell Chemical Company, by and through
their attorneys, file the within preliminary objections to
plaintiff's amended complaint in accordance with the Pennsylvania
Rules of Civil Procedure.

1. This wrongful death and survival action was commenced on February 5, 1993 by the filing of a praecipe for a writ of summons. A complaint was subsequently filed by plaintiff and thereafter served on or about May 12, 1993.

2. This suit was brought under the Pennsylvania Wrongful Death Act, 42 Pa.C.S.A. § 8301 ("Wrongful Death Act"), and the Pennsylvania Survival Act, 42 Pa.C.S.A. § 8302 and 20 Pa.C.S.A. §§ 3371-3373 ("Survival Act"), arising out of the alleged death of Robert Monaghan ("Decedent") from glioblastoma multiforme, a malignant brain tumor, allegedly contracted as a result of his occupational exposure to vinyl chloride monomer (hereinafter "VCM") manufactured, supplied and/or sold by the defendants, including moving defendants.

3. The original complaint, set forth in eight separate counts, purported to allege causes of action by plaintiff Mary Ann Monaghan acting in three separate capacities: (a) as executrix of the estate of Robert Monaghan for recovery under the Pennsylvania Survival Act (Count VI); (b) as personal representative of the decedent for recovery under the Wrongful Death Act and pursuant to Pa.R.C.P. No. 2202(a) (Count V); and (c) as reflected in the ad damnum clauses, in her own right as the surviving spouse of decedent (Counts I, II, III, VII and VIII).

4. The defendants filed preliminary objections to the original complaint on June 1, 1993.

5. In lieu of filing a response to defendants' preliminary objections, on or about October 25, 1993 plaintiff served on moving defendants an amended complaint pursuant to Pa.R.Civ.P. 1028(c)(1).

6. Defendants hereby preliminarily object to plaintiff's amended complaint as follows.

A. Preliminary Objection In The Nature Of A Motion To Strike Off The Claims Of Plaintiff Mary Ann Monaghan In Her Own Right For Lack Of Conformity To Law Or Rule Of Court Pursuant To Pa.R.Civ.P. No. 1028(a)(2).

7. In paragraph 29 of her amended complaint, plaintiff avers that she is bringing this action not only as the personal representative of the decedent and on behalf of all persons entitled to recover under the Wrongful Death Act, but on her own behalf.

8. Additionally, in paragraphs 36 and 37 of her amended complaint, plaintiff claims damages for her alleged loss of the decedent's services, society and companionship until his death.

9. A surviving spouse cannot maintain a separate cause of action on her own behalf not brought during the lifetime of her deceased spouse, including a cause of action for loss of consortium, since such damages are recoverable only in an action pursuant to the Wrongful Death Act and therefore the claims of plaintiff Mary Ann Monaghan are permitted only in her representative, not her individual, capacity.

WHEREFORE, moving defendants respectfully request this Honorable Court to strike any and all claims brought by plaintiff on her own behalf.

**B. Preliminary Objection Pursuant To Pa.R.Civ.P.
No. 1028(a)(2) In The Nature Of A Motion To Strike Off
Strict Liability Claim Under The Wrongful Death Act.**

10. Moving defendants incorporate by reference the averments set forth in paragraphs 1 through 9 as though same were set forth herein at length.

11. In her amended complaint, plaintiff attempts to set forth causes of action against the defendants for negligence (§§ 22-25) and strict liability (§§ 26-27).

12. Under the Wrongful Death Act, recovery is permitted only for the "wrongful act or neglect or unlawful violence or negligence of another . . ." and, therefore, those claims of plaintiff Mary Ann Monaghan seeking recovery pursuant to the Wrongful Death Act for strict liability must be stricken as such claims are not cognizable under said Act.

WHEREFORE, moving defendants respectfully request this Honorable Court to strike plaintiff's claims for strict liability under the Wrongful Death Act.

D. Preliminary Objection Pursuant To Pa.R.Civ.P. No. 1028(a)(4) In The Nature Of A Demurrer To Plaintiff's Claims Under The Wrongful Death Act.

17. Moving defendants incorporate by reference the averments set forth in paragraphs 1 through 16 as though same were set forth herein at length.

18. In her amended complaint, plaintiff avers that during his lifetime decedent filed no "valid" action to recover damages for the acts or omissions which alleged ultimately caused his death.

19. An action may be brought under the Wrongful Death Act, 42 Pa.C.S.A. § 8301(a), only if no action, valid or invalid, was brought by the injured individual during his lifetime, and therefore any action for recovery under the Wrongful Death Act would be barred if decedent had brought any action, valid or otherwise, during his lifetime, for damages proximately resulting from another's wrongful act, neglect, unlawful violence or negligence.

20. Plaintiff has failed to aver that decedent had commenced no action during his lifetime and therefore plaintiff has failed to plead all of the necessary elements of a cause of action under the Wrongful Death Act.

WHEREFORE, moving defendants respectfully request that this Honorable Court dismiss all claims brought by plaintiff under the Wrongful Death Act.

C. Preliminary Objection Pursuant To Pa.R.Civ.P. N .
1028(a)(-) In The Nature Of A Motion To Strike Claims
For Damages On Behalf Of Children Under The Wrongful
Death Act.

13. Moving defendants incorporate by reference the averments set forth in paragraphs 1 through 12 as though same were set forth herein at length.

14. In paragraph 31 of her amended complaint, plaintiff alleges that, in addition to herself, decedent's children, Michele M. Nicholas and Patrick Monaghan, "are entitled to proceed under the Wrongful Death Act."

15. Plaintiff's amended complaint fails to aver that said children suffered any pecuniary loss through any deprivation of the earnings of the decedent which said children would have received but for the death of the decedent, which loss is a necessary element to a right of recovery on behalf of children of a decedent under the Wrongful Death Act.

16. Since plaintiff's amended complaint does not aver the necessary element of such pecuniary loss to decedent's children, plaintiff has failed to set forth claims for recovery of damages on behalf of decedent's children for which relief can be granted and therefore said claims should be stricken.

WHEREFORE, moving defendants respectfully request this Honorable Court to strike all claims for damages on behalf of decedent's children.

E. Preliminary Objection In The Nature Of A Demurrer Pursuant To Pa.R.Civ.P. No. 1028(a)(4) For Plaintiff's Failure To Plead Sufficient Facts Upon Which A Claim For Punitive Damages May Be Brought.

21. Moving defendants incorporate by reference the averments set forth in paragraphs 1 through 20 above as though same were set forth herein at length.

22. In paragraph 35 (d) of her amended complaint, plaintiff seeks "punitive and exemplary damages" in her second cause of action under the Survival Act for the alleged "willful, wanton and gross negligence of the defendants as fully set forth in paragraphs 24 and 25."

23. However, all that plaintiff avers in paragraphs 24 and 25 is that beginning at some point prior to decedent's employment, vinyl chloride became known in the scientific and medical literature as a hazardous substance, including as a cause of cancer, which knowledge was allegedly known and available to the defendants, but that despite such knowledge, the defendants continued to supply vinyl chloride to decedent's employer.

24. Plaintiff's conclusory allegations of willful, wanton and gross negligence set forth in paragraphs 24 and 25 of plaintiff's amended complaint are insufficient to support a claim for punitive damages.

WHEREFORE, moving defendants respectfully request this Honorable Court to dismiss all claims by plaintiff for punitive damages.

**F. Preliminary Objection In Th Nature Of A Motion For
More Specific Pleading Pursuant To Pa.R.Civ.P. No.
1028(a)(3).**

25. Moving defendants incorporate by reference the averments set forth in paragraphs 1 through 24 above as though same were set forth herein at length.

26. Plaintiff's amended complaint fails to comply with Pa.R.Civ.P. No. 1019 regarding specificity of pleadings in the following respects:

(a) Failing to aver the dates on which decedent was exposed to each of the moving defendants' vinyl chloride products;

(b) Failing to set forth with specificity the alleged "applicable state and federal safety regulations and safety codes for use of and exposure to VCM", as described in paragraph 23(h) of the amended complaint; and

(c) Failing to sufficiently set forth specific material facts upon which plaintiff's claim for punitive damages is based including, but not limited to, which, if any, of the moving defendants allegedly possessed knowledge of the alleged carcinogenicity of VCM, whether any such knowledge included knowledge of a causal association between exposure to VCM and glioblastoma multiforme or other types of brain cancer, along with averments as to what each defendant did or failed to do in light of such knowledge which constitutes "extreme and outrageous conduct" which would entitle plaintiff to punitive damages in her survival action.

WHEREFORE, moving defendants respectfully request this Honorable Court for an order, in the event that plaintiff's claims are not stricken or dismissed, requiring plaintiff to file a more specific complaint, upon default of which any remaining claims of plaintiff should be stricken.


RICHARD C. BIEDRZYCKI

Attorney for Defendants
Allied-Signal, Inc.,
The B.F. Goodrich Company,
Ethyl Corp. and
Shell Chemical Company

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this date caused true and correct copies of the attached preliminary objections of defendants Allied-Signal, Inc., The B.F. Goodrich Company, Ethyl Corp. and Shell Chemical Company to be served on all counsel of record by forwarding same first-class mail, postage prepaid, addressed as follows: (SEE ATTACHED SERVICE LIST)


RICHARD C. BIEDRZYCKI

Dated: 11 / 12 / 93

SERVICE LIST

Monaghan v. Allied Chemical Corp., et al.

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